
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DAVID A. H.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:22-cv-00456

District Judge Jill N. Parrish

Magistrate Judge Daphne A. Oberg

On March 13, 2023, Magistrate Judge Daphne A. Oberg issued a Report and Recommendation that this court reverse the decision by the Commissioner of the Social Security Administration (“the Commissioner”) denying Plaintiff David H.’s¹ application for Disability Insurance Benefits and remand the case for further proceedings. The Commissioner moved for this reversal. ECF No. 27. The Report and Recommendation advised the parties that a failure to object within fourteen days of service could result in a waiver of objections upon review by this court. David H. did not file an objection within the fourteen-day time limit.

The Defendant’s failure to object waived any argument that the Report and Recommendation was in error. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). However, the court need not apply the waiver rule as a procedural bar if “the interests of justice so dictate.” *Id.* (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). The court has reviewed the Report and Recommendation and its conclusion that the

¹ Pursuant to best practices in the District of Utah addressing privacy concerns in certain cases, including social security cases, the court refers to the plaintiff by his first name and last initial only.

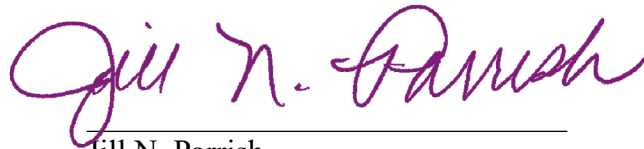
Commissioner's decision should be reversed. The court concludes that the Report and Recommendation is not clearly erroneous and finds that the interests of justice do not warrant deviation from the waiver rule. The court, therefore, ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation, ECF No. 28, is ADOPTED IN FULL.
2. The court GRANTS the Commissioner's unopposed motion to remand. ECF No. 27.
3. The court REVERSES the Commissioner's determination in David H.'s case.
4. The court REMANDS the case for further proceedings consistent with the Report and Recommendation.

DATED April 4, 2023

BY THE COURT



Jill N. Parrish
United States District Court Judge